OCT 5 1995

No. 95-209

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

JEFFERSON-PILOT LIFE INSURANCE COMPANY, INC.,
Petitioner,
v.
WILLARD WEEMS and JULIA WEEMS,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Alabama

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF AS *AMICUS CURIAE* OF THE BUSINESS COUNCIL OF ALABAMA IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

Business Counsel of Alabama hereby respectfully moves for leave to file the attached brief *amicus curiae* in this case. The consent of the attorney for the petitioner has been obtained. The consent of the attorney for the respondent was requested but refused.

The interest of the Business Counsel of Alabama in this case arises from the fact that it is a non-profit association whose members sponsor "employee welfare benefit plans" and "employee pension benefit plans." The conflict created between state court proceedings and federal court proceedings by the Alabama Supreme Court's decision affects *Amicus'* membership.

In the instant case in the Alabama Supreme Court, without jurisdiction, held that extracontractual and punitive damages are recoverable under ERISA and a right to jury trial exists under ERISA. This decision is in direct conflict with the decisions of this Court and the Eleventh Circuit.

Respectfully submitted,

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TABLE OF CONTENTS

	Page
INTEREST OF THE AMICUS	1
REASONS FOR GRANTING THE WRIT	2
I. THE ALABAMA SUPREME COURT HAS DEMONSTRATED AN AVERSION TO STATE OR FEDERAL LEGISLATION WHICH LIMITS THE AWARD OF PUNITIVE DAMAGES BY JURIES	3
II. THE ALABAMA SUPREME COURT LIKEWISE HAS REJECTED CONTROLLING FEDERAL PRECEDENT ON THE ISSUE OF ERISA PREEMPTION OF STATE COMMON LAW CLAIMS FOR PUNITIVE DAMAGES	6
III. ALLOWING THE ALABAMA SUPREME COURT'S PUNITIVE DAMAGES RULING TO STAND UNCHALLENGED HAS THE FORESEEABLE IMPACT OF ADVERSELY AFFECTING THE WELFARE AND SECURITY OF THOUSANDS OF WORKING MEN AND WOMEN IN THE STATE OF ALABAMA	7
CONCLUSION	9

TABLE OF AUTHORITIES

CASES Page

Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813 (1986).. 5
Allied-Bruce Terminix Cos. v. Dobson, 628 So. 2d 354 (Ala. 1993), *rev'd*, —— U.S. ——, 115 S. Ct. 834, 130 L.Ed.2d 753 (1995) 3
Allied-Bruce Terminix Cos. v. Dobson, —— U.S. ——, 115 S. Ct. 834, 130 L.Ed.2d 753 (1995).... 4
Blake v. Union Mutual Stock Life Ins. Co., 906 F.2d 1525 (11th Cir. 1990) 6
BMW of North America, Inc. v. Gore, —— So. 2d —— (Ala. 1994), *cert. granted*, U.S. Supreme Court No. 94-896 4
District of Columbia v. Greater Washington Board of Trade, —— U.S. ——, 113 S. Ct. 580, 121 L.Ed.2d 513 (1992) 7
Drinkwater v. Metropolitan Life Ins. Co., 846 F.2d 821 (1st Cir.), *cert. denied*, 488 U.S. 909 (1988).. 6
Harbor Ins. Co. v. Blackwelder, 554 So. 2d 329 (Ala. 1989), *cert. denied*, 495 U.S. 948 (1990).... 7
Harsch v. Eisenberg, 956 F.2d 651 (7th Cir.), *cert. denied*, —— U.S. ——, 113 S. Ct. 61, 121 L.Ed.2d 29 (1992) 6
Healthamerica v. Menton, 551 So. 2d 235 (Ala. 1989), *cert. denied*, 493 U.S. 1093 (1990) 7
Henderson v. Alabama Power Co., 627 So. 2d 878 (Ala. 1993) 5
Honda Motor Co. v. Oberg, —— U.S. ——, 114 S. Ct. 2331, 129 L.Ed.2d 336 (1994) 5
Ingram v. American Chambers Life Ins. Co., 643 So. 2d 575 (Ala. 1994) 7
Lafoy v. HMO Colorado, 988 F.2d 97 (10th Cir. 1993) 6
McRae v. Seafarer's Welfare Plan, 920 F.2d 819 (11th Cir. 1988) 6
Medina v. Anthem Life Ins. Co., 983 F.2d 29 (5th Cir.), *cert. denied*, —— U.S. ——, 114 S. Ct. 66, 126 L.Ed.2d 35 (1993) 6
Pacific Mutual Life Insurance Co. v. Haslip, 499 U.S. 1 (1991) 4, 5

TABLE OF AUTHORITIES—Continued

	Page
Pilot Life Insurance Co. v. Dedeaux, 481 U.S. 41 (1987)	7
Powell v. Chesapeake & Potomac Tel. Co., 780 F.2d 419 (4th Cir. 1985), *cert. denied*, 476 U.S. 1170 (1986)	6
Smith v. Schulte, —— So. 2d ——, 1995 WL 491245 (Ala. 1995)	5
Sokol v. Bernstein, 803 F.2d 532 (9th Cir. 1986)	6
Sommers Drug Stores Co. Employee Profit Sharing Trust v. Corrigan Enterprises, Inc., 793 F.2d 1456 (5th Cir. 1986), *cert. denied*, 479 U.S. 1034 (1987)	6
Southern Life & Health Ins. Co. v. Turner, 586 So. 2d 854 (Ala. 1991)	4
TXO Production Corp. v. Alliance Resources, Inc., —— U.S. ——, 113 S. Ct. 2711, 125 L.Ed.2d 366 (1993)	5
Varhola v. Doe, 820 F.2d 809 (6th Cir. 1987)	6
STATUTES	
9 U.S.C. § 1	3
29 U.S.C. § 1001	8
29 U.S.C. § 1132(e)(1)	2

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BRIEF OF THE BUSINESS COUNCIL OF ALABAMA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

INTEREST OF THE *AMICUS*[1]

The Business Council of Alabama ("*Amicus*"), is a non-profit association. Its membership consists of over 4,000 businesses of all sizes and descriptions which are the source of employment for thousands of Alabama citizens. Many of its members sponsor "employee welfare benefits plans" and "employee pension benefit plans."

Amicus therefore is vitally interested in issues involving employee benefits. It is particularly concerned by the conflict that exists between Alabama state courts and the federal courts by virtue of the Alabama Supreme Court's

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[1] The Petitioner's letter of consent to the filing of this brief has been filed with the Clerk of the Court. The Respondents' counsel refused to consent to the filing of this brief. Accordingly, Amicus has filed a motion for leave to file this brief with the Clerk of the Court.

holding in the case below that Congress intended to authorize jury trials and punitive damages in cases brought under the Employee Retirement Income Security Act ("ERISA") of 1974. Such a holding clearly conflicts with controlling federal authority which governs the decision of such cases in federal courts in this and other jurisdictions.[2] Furthermore, the reasoning of the Alabama Supreme Court is such that Petitioner and Amicus can no longer rely on any ERISA provision or federal court decision interpreting ERISA in the administration of their plans insofar as those plans involve an Alabama resident.

Amicus therefore urges the Court to grant certiorari to review and resolve the conflict over whether Congress intended to authorize state court jury trials, and the imposition of extra-contractual and punitive damages, in ERISA cases.

REASONS FOR GRANTING THE WRIT

At its core, this case is about whether ERISA permits jury awards of punitive and other extra-contractual damages in state courts. The Alabama court in this case, notwithstanding clear and controlling federal case law to the contrary, has authorized the imposition of punitive damages by juries in cases that involve claims which 'relate to' ERISA plans.

It is difficult to conceive of a clearer conflict between Alabama state court and federal court case authority, on a subject of broader public importance, than is presented by the question in this case. The goal of nationwide uniformity intended by Congress under ERISA is sharply undermined where the available remedies differ according to where the case is decided, even within the same state's

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[2] Under the plain language of ERISA, the Alabama Supreme Court lacked subject matter jurisdiction over the breach of fiduciary duty claim and the interference with rights claim. *See* 29 U.S.C. § 1132(e)(1). The Petition masterfully addresses the jurisdiction issue and, therefore, *Amicus* will focus on other issues.

boundaries. Such a conflict is especially vexatious to employers doing business on a national basis who thereby are exposed to different rules of liability in employee benefit cases depending, literally, upon the address of the courthouse. Allowing the Alabama Supreme Court's decision to stand unchallenged has the foreseeable potential of adversely effecting the welfare and security of thousands of Alabamians.

The question presented in this case is vitally important standing alone. It is doubly compelling when seen against the backdrop of other Alabama state court decisions which have sought to emasculate federal and state attempts to regulate the imposition of punitive damages in state courts. The conflict presented in this case will continue to exist in Alabama until, and unless, this Court clarifies whether the decision below is in conformity with ERISA's statutory scheme as construed by this and other federal and state courts.

I. THE ALABAMA SUPREME COURT HAS DEMONSTRATED AN AVERSION TO STATE OR FEDERAL LEGISLATION WHICH LIMITS THE AWARD OF PUNITIVE DAMAGES BY JURIES.

The decision below is an excellent example of the Alabama Supreme Court's predisposition to avoid application of federal or state laws that would restrict claims for punitive and other extra-contractual damages in jury trials. This Court, in a series of cases dating back ten years, is again being called upon to intervene in an Alabama case to uphold federal constitutional and statutory guaranties which have been rejected by the Alabama court.

For example, until recently the Alabama court refused to give effect to the Federal Arbitration Act ("FAA")[3] by reasoning that parties to a written contract did not, at the time it was executed, "contemplate" substantial interstate activity. *See Allied-Bruce Terminix Cos. v. Dobson*, 628 So. 2d 354 (Ala. 1993), *rev'd*, —— U.S. ——,

[3] 9 U.S.C. § 1 *et seq.*

115 S. Ct. 834, 130 L.Ed. 2d 753 (1995). Alabama litigants, unable to enforce arbitration agreements, thus were required to engage in often lengthy and expensive pre-trial discovery and jury trials that would not have been required in other state or federal court jurisdictions which gave effect to the FAA. This Court resolved the resulting conflict by vacating the Alabama court's judgment and holding that the FAA must likewise be enforced in Alabama state courts. *See Allied-Bruce Terminix Cos. v. Dobson,* —— U.S. ——, 115 S. Ct. 834, 130 L.Ed. 2d 753 (1995).

This Court is currently reviewing the constitutionality of a $4 million punitive damage award (remitted to $2 million) in another Alabama punitive damages case where the actual damages were only $4,000. *BMW of North America, Inc. v. Gore,* —— So. 2d —— (Ala. 1994), *cert. granted,* U.S. Supreme Court No. 94-896. In that case the Alabama court upheld a jury verdict despite its own conclusion that the award was tainted by the admission into evidence of extra-territorial actions which were not illegal in those jurisdictions. The affirmance of the judgment in such a disproportionate amount is traceable back to the Alabama court's philosophy, contrary to *Pacific Mutual Life Insurance Co. v. Haslip,* 499 U.S. 1 (1991), that punitive damage awards need not bear a rational relationship to the compensatory damages. Indeed the Alabama court holds that, "[i]mposing . . . a relationship [between compensatory and punitive damages] would inevitably result in *injustice* and we decline to impose it. *Southern Life & Health Ins. Co. v. Turner,* 586 So. 2d 854, 858 (Ala. 1991).

Despite suggestions by members of this Court that state legislatures have the power to limit punitive damages,[4]

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[4] *See Pacific Mutual Ins. Co. v. Haslip,* 499 U.S. at 39 (Scalia, J., concurring specially) & at 57 (O'Connor, J., dissenting), wherein Justices Scalia and O'Connor each observed that state legislatures have the power to limit punitive damages awards.

the Alabama court has steadfastly held otherwise. On the day this Court announced its punitive damages decision in *TXO Production Corp. v. Alliance Resources, Inc.*, —— U.S. ——, 113 S. Ct. 2711, 125 L.Ed.2d 366 (1993), the Alabama court struck down legislation which imposed a flexible limit on punitive damages. It declared, in *Henderson v. Alabama Power Co.*, 627 So. 2d 878 (Ala. 1993), that the Alabama Constitution forbade legislative limits upon punitive damages in any manner. Such holding is difficult to reconcile with this Court's statement in *Honda Motor Co. v. Oberg*, —— U.S. ——, 114 S. Ct. 2331, 129 L.Ed.2d 336 (1994), that *Haslip* and *TXO* "established that States [whether by constitution or state courts] cannot abolish limits on the award of punitive damages." *Oberg*, —— U.S. at ——, 114 S. Ct. at 2340 n.9. Yet the Alabama court continues to insist that its state constitution does exactly that. As recently as August, 1995, the Alabama Supreme Court struck down another such legislative provision, limiting punitive damages, as being forbidden by Alabama's constitution. *See Smith v. Schulte*, —— So. 2d ——, 1995 WL 491245 (Ala. 1995).

As a final example, the Court will recall that almost ten years ago in *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813 (1986), it vacated a $3.5 million punitive damages award which the Alabama court had affirmed despite the fact that one of the Alabama court's judges, who voted in the case, had a financial interest in the outcome. The disqualified judge was himself a plaintiff in a similar separate case and, thus, benefitted from the state court's judgment affirming the punitive damages award for bad faith. Until this Court intervened, and unanimously vacated the award, the Alabama court had adamantly held that no due process violation resulted from the participation of the financially interested judge.

As seen against the background of these cases, the Alabama court's decision below is not an aberration but

rather, typical of that court's "unprecedented disdain for" any statutory scheme which would restrict or regulate the traditional common law right to recover unlimited punitive damages in jury trials.

II. THE ALABAMA SUPREME COURT LIKEWISE HAS REJECTED CONTROLLING FEDERAL PRECEDENT ON THE ISSUE OF ERISA PREEMPTION OF STATE COMMON LAW CLAIMS FOR PUNITIVE DAMAGES.

In the case below, the Alabama Supreme Court has authorized the recovery of punitive damages, as well as the right to jury trial, in ERISA cases despite controlling federal authority that ERISA affords no such rights.[5]

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[5] The Eleventh Circuit has clearly held that extracontractual damages are not available under ERISA. *See*, e.g., *McRae v. Seafarer's Welfare Plan*, 920 F.2d 1499 (11th Cir. 1988). It also holds that ERISA does not afford a plaintiff the right to a jury trial. *See*, e.g., *Blake v. Union Mutual Stock Life Ins. Co.*, 906 F.2d 1525 (11th Cir. 1990). The Fifth, Seventh and Tenth Circuits have joined the Eleventh Circuit in holding that *Ingersoll-Rand* did not authorize the recovery of extracontractual or punitive damages under ERISA. *See Lafoy v. HMO Colorado*, 988 F.2d 97 (10th Cir. 1993); *Medina v. Anthem Life Ins. Co.*, 983 F.2d 29 (5th Cir.), *cert. denied*, —— U.S. ——, 114 S. Ct. 66, 126 L.Ed.2d 35 (1993) and *Harsch v. Eisenberg*, 956 F.2d 651 (7th Cir.), *cert. denied*, —— U.S. ——, 113 S. Ct. 61, 121 L.Ed.2d 29 (1992).

The First, Fourth, Fifth, Sixth, Seventh, and Ninth Circuits likewise hold that extracontractual and/or punitive damages are not recoverable. *See, e.g., Drinkwater v. Metropolitan Life Ins. Co.*, 846 F.2d 821 (1st Cir.), *cert. denied*, 488 U.S. 909 (1988); *Powell v. Chesapeake & Potomac Tel. Co.*, 780 F.2d 419 (4th Cir. 1985), *cert. denied*, 476 U.S. 1170 (1986); *Sommers Drug Stores Co. Employee Profit Sharing Trust v. Corrigan Enterprises, Inc.*, 793 F.2d 1456 (5th Cir. 1986), *cert. denied*, 479 U.S. 1034 (1987); *Varhola v. Doe*, 820 F.2d 809 (6th Cir. 1987); *Harsch v. Eisenberg*, 956 F.2d 651 (7th Cir.), *cert. denied*, —— U.S. ——, 113 S. Ct. 61, 121 L.Ed.2d 29 (1992); and *Sokol v. Bernstein*, 803 F.2d 532 (9th Cir. 1986).

As early as 1989, the Alabama court declined to follow this Court's holding in *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41 (1987), that state common law claims of fraudulent inducement and bad faith were preempted where such claims "relate[d] to" an ERISA plan. *See Healthamerica v. Menton*, 551 So. 2d 235 (Ala. 1989), *cert. denied*, 493 U.S. 1093 (1990); *Harbor Ins., Co. v. Blackwelder*, 554 So. 2d 329 (Ala. 1989) *cert denied*, 495 U.S. 948 (1990).

Even after this Court expounded upon the broad scope of ERISA's preemptive provisions, in *District of Columbia v. Greater Washington Board of Trade*, —— U.S. ——, 113 S.Ct. 580, 121 L.Ed.2d 513 (1992), the Alabama court still refused to recognize that claims for fraud in the inducement were preempted where such claims related to an ERISA plan. See *Ingram v. American Chambers Life Ins. Co.*, 643 So. 2d 575 (Ala. 1994). In *Ingram* the Alabama court openly acknowledged that its previous decisions rejecting ERISA preemption in *Menton* "came after, and *despite*, the Supreme Court's decision in *Pilot Life*." *Ingram*, 643 So. 2d at 577 (emphasis added). The state court in *Ingram* further rejected the notion that contrary decisions of the Eleventh Circuit Court of Appeals should be given any controlling effect.

III. ALLOWING THE ALABAMA SUPREME COURT'S PUNITIVE DAMAGES RULING TO STAND UNCHALLENGED HAS THE FORESEEABLE IMPACT OF ADVERSELY AFFECTING THE WELFARE AND SECURITY OF THOUSANDS OF WORKING MEN AND WOMEN IN THE STATE OF ALABAMA.

The Alabama Supreme Court's decision severs the thin hair suspending the Damocles sword over the heads of current employee participants in welfare benefit plans in the State of Alabama. Multi-million dollar punitive damage verdicts in Alabama have caused insurance companies to cease selling new business in the State of Alabama,

whether publicly announced or silently undertaken. As a result of this decision, it is clearly foreseeable that Alabama employers will likewise discontinue and terminate employee benefit plans rather than face out-of-control punitive damage verdicts depriving thousands of Alabamians of the benefits offered by those plans. Likewise, it can be expected that insurance companies will cease offering their products to fund employee benefit plans rather than face the risk of punitive damages. As recognized by Congress in its Findings and Declarations of policy:

> [T]he continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and the successful development of industrial relations; that they have become an important factor in commerce because of the interstate character of their activities, and of the activities of their participants, and the employers, employee organizations, and other entities by which they are established or maintained. . . .

29 U.S.C. § 1001.

In its zeal to convey to all plaintiffs, and their attorneys, the unfettered right to keep whatever they can sell an Alabama jury to award, the Alabama Supreme Court has disrupted the balance of ERISA rights and remedies which has existed for over 20 years.

The case at bar is an example of the Alabama court's adamant refusal to enforce Congress' intent as expressed in ERISA, and declared by the federal courts, where the statute is held to prohibit the award of extra-contractual and punitive damages. Such conflict serves only to undermine the very evil Congress sought to resolve by its enactment of ERISA in 1974.

Amicus urges the Court to quickly and decisively answer this issue so that the welfare of thousands of Alabamians will not be adversely impacted by this obviously incorrect ruling.

CONCLUSION

Amicus urges the the Court to grant certiorari in this case to clarify that ERISA does not authorize jury trials or the recovery of extracontractual and punitive damages in state or federal courts.

Respectfully submitted,

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